

A-71266  
ESW

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#9

In re application of:	)	
Pieter Theodorus Joseph Aquarius, et al.	)	Examiner: Unknown
Serial No. 10/031,111	)	Group Art Unit: Unknown
Filed: January 8, 2002	)	
For: DEVICE FOR MANUFACTURING	)	International Application
CUSHIONS FILLED WITH A	)	No. PCT/NL01/00351
MEDIUM, SERIES OF CUSHIONS	)	
AND CUSHION MANUFACTURED	)	International Filing
BY SUCH A DEVICE, AND	)	Date: May 8, 2001
TUBULAR FOIL	)	

**SECOND RENEWED PETITION UNDER 37 CFR 1.47(b)**

Mail Stop PCT  
 Commissioner for Patents  
 Office of PCT Legal Administration  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

In the Decision mailed October 27, 2003, applicant's renewed petition under 37 CFR 1.47(b) was denied on the basis that applicant had not submitted sufficient proof that (1) the inventors refused to execute the application or cannot be reached after diligent effort and (2) applicant had sufficient proprietary interest in the application. Reconsideration of that decision is requested.

**Inventors' Failure to Sign**

The relevant facts are as follows. The invention was made jointly by Messrs. Aquarius and Straver, both of whom are Dutch citizens residing in the Netherlands. At the time the invention was made, Aquarius was an owner and employee of Case Packing Sales Europe B.V., ("Case"), and Straver was an employee of Flo-Pak BV, the Dutch subsidiary of Free-Flow Packaging International, Inc. ("Free-Flow"). The application is a national filing of a PCT application filed jointly by Free-Flow and

EXAMINER'S DIVISION  
 RECEIVED

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Case. The application was filed by Free-Flow's attorney Wright at the request of Case's Dutch attorneys Vriesendorp & Gaade ("Vriesendorp"). Straver is no longer an employee of Flo-Pak or Free-Flow, and all efforts to get the two inventors to sign the application were made through Vriesendorp because Vriesendorp represented them.

The Examiners' conclusion that applicant has not submitted sufficient proof that the inventors refused to sign or could not be reached appears to be based upon a misunderstanding as to what was actually presented to the inventors and how it was presented.

Contrary to the Examiners' suggestion, the inventors were presented with a complete copy of the application as filed in the United States. It was sent to their attorney Vriesendorp by Free-Flow's attorney Wright with a letter dated January 16, 2002. Since that letter does not appear to have been submitted previously, a copy is attached (Exhibit L) to the accompanying Second Supplemental Statement of Edward S. Wright, together with complete copies of the papers which were filed in the Patent Office and sent to Vriesendorp (Exhibit M).<sup>1</sup> Those papers included a 37 U.S.C. §371 transmittal letter, a copy of the PCT application, a preliminary amendment, and a copy of the international search report. Thus, the inventors were in fact presented with a complete copy of the application papers, via their attorney, in accordance with MPEP Section 409.03(d).<sup>2</sup>

The inventors were requested to sign the application both before and after it was filed, and copies of the declaration papers presented to the inventors for that purpose are attached to the Second Supplemental Wright Statement. The prefiling declaration (Exhibit N) is a combined declaration and power of attorney, and it

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<sup>1</sup>*Exhibits A-H and I-K are attached to the Wright Statement and Supplemental Statement, of record.*

<sup>2</sup>*That copy was probably superfluous from the standpoint of presenting the inventors with the application because they already had it. The application which was filed in the U.S. was a national filing of the PCT application. The inventors knew that was what was being filed because their attorney is the one who instructed Wright to file it.*

specifically identifies the specification of the U.S. application as being the PCT application. The postfiling declaration (Exhibit O) refers specifically to the application which was filed in the United States and includes a claim of priority to the PCT application. The prefiling declaration (Exhibit N) was sent to the inventors with Wright's letter of December 21, 2002 to attorney Vriesendorp (Exhibit B) and by email (Exhibit C) that same day. The postfiling declaration (Exhibit O) was sent to the inventors with Wright's letter of April 29, 2003 to Vriesendorp (Exhibit E).

Now that the declaration papers have been submitted, it is clear that what was being filed in the United States was the PCT application and that the inventors were fully apprised of that fact both before and after the application was actually filed.

Under the circumstances, applicant trusts that the Examiners will now agree that it was not necessary to send a copy of the PCT application to the inventors with the prefiling declaration papers because they already had it and they knew that was what was being filed. As further proof of the point, applicant would direct the Examiners' attention to the initial letter from Vriesendorp (Exhibit A) in which Vriesendorp instructed Wright to "enter the U.S. national stage" and provided Wright with a copy of the front page of the published PCT application (Exhibit J) for use in preparing the formal papers for the application. That letter (Exhibit A) in and of itself is conclusive proof that Vriesendorp and the inventors had the PCT application in hand, intended that it be filed in the United States, and expected that the papers prepared by Wright and sent to them for signature would pertain to it.

After the application was filed, the inventors were sent both a declaration identifying the application (Exhibit O) and a complete copy of the application as filed (Exhibit M). Those papers were sent to the attorney Vriesendorp in accordance with MPEP Section 409.03(d).

In suggesting that there is no documentary evidence that the inventors were ever presented with the declaration, the Examiners have apparently overlooked the Wright letters of December 21, 2001 (Exhibit B) and April 29, 2002 (Exhibit E) and email message of December 21, 2001 (Exhibit C), all to Vriesendorp, the attorney for

the inventors. Those letters and the email message clearly show that the inventors were indeed presented with the declarations.

Since applicant has affirmatively proved both that the non-signing inventors were in possession of the application as filed in the USPTO and that a *bona fide* effort was made to present a copy of the application papers to the inventors by sending them to their attorney, the requirements of 37 CFR 1.47(b)(2) have been fully met.

### **Proprietary Interest**

Applicant finds it rather curious that the Examiners would question Free-Flow's right to file the application when Free-Flow is one of the applicants named in the PCT application which now entering the national phase in the United States. That fact in itself is irrefutable proof of Free-Flow's ownership of the application, and the fact that the application was filed by the inventors and their attorney in Free-Flow's name is a clear acknowledgment on their part of Free-Flow's rights in the application.

Be that as it may, however, since the Examiners have requested a copy of Straver's employment agreement, a copy of the agreement between Straver and Flo-Pak BV is being submitted together with a declaration of applicant's president, Arthur Graham, who has first-hand knowledge of the facts regarding Straver's employment and the invention.

The Examiners' attention is directed to Section 12 of the employment agreement which provides, *inter alia*, that inventions relating to or connected with the business of Flo-Pak BV and its affiliates shall be assigned to the company upon written request of the employer. That request was made when Wright sent the declaration and assignment papers to Vriesendorp for signature by Straver.

Even today, applicant is still trying to get one or both of the non-signing inventors to join in the application. As stated in the accompanying Graham Declaration, applicant has recently learned where Straver may be, and if Straver is

no longer represented by Vriesendorp or other hostile counsel, applicant will once again present the application to him for signature.

### **Summary and Conclusion**


The concerns of the Examiners have been met. The additional proof submitted with this renewed petition makes it abundantly clear that the inventors were properly presented with the declaration and other application papers, that they refused to sign or could not be reached after diligent effort, and that applicant has sufficient proprietary interest in the application.

Since all of the requirements of 37 CFR 1.47(b) have now been met, the application should now be allowed to proceed without signature by the inventors.

### **Fees**

The Commissioner is authorized to charge any fees required in this matter, including extension fees, to Deposit Account No. 50-2975, Order No. A-71266.

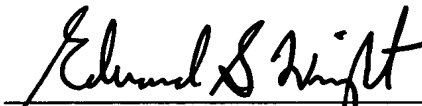
Respectfully submitted,

  
\_\_\_\_\_  
Edward S. Wright  
Reg. No. 24,903

(650) 330-0830

### **CERTIFICATE OF MAILING**

I hereby certify that the foregoing Second Renewed Petition Under 37 CFR 1.47(b), the accompanying Second Supplemental Statement of Edward S. Wright in Support of Petition Under 37 CFR 1.47(b), and the accompanying Declaration of Arthur Graham in Support of Petition Under 37 CFR 1.47(b) are being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450

  
\_\_\_\_\_  
Edward S. Wright

## **EXHIBIT M**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Pieter Theodorus Joseph Aquarius, et al.

Serial No. 10/031,111

Filed: January 8, 2002

For: DEVICE FOR MANUFACTURING  
CUSHIONS FILLED WITH A  
MEDIUM, SERIES OF CUSHIONS  
AND CUSHION MANUFACTURED  
BY SUCH A DEVICE, AND  
TUBULAR FOIL

Examiner: Unknown

Group Art Unit: Unknown

International Application  
No. PCT/NL01/00351

International Filing  
Date: May 8, 2001

**DECLARATION OF ARTHUR GRAHAM**  
**IN SUPPORT OF PETITION UNDER 37 CFR 1.47(b)**

I, Arthur Graham, declare and state as follows:

1. I am the President of applicant Free-Flow Packaging International, Inc. ("Free-Flow").
2. Flo-Pak BV ("Flo-Pak") is a subsidiary of Free-Flow and is located in the Netherlands. As President of Free-Flow, I oversee and am familiar with the operations of Flo-Pak.
3. In October 1997, I hired Frederik C.M. Straver ("Straver") as the Managing Director of Flo-Pak, and a copy of the employment contract between Flo-Pak and Straver is attached as Exhibit P. I signed that agreement on behalf of Flo-Pak.
4. Free-Flow and its subsidiaries are in the packing material business, and in recent years that business has extended to air-filled packing cushions, including machines and methods for making, inflating and sealing plastic film materials used in such cushions. The application identified above relates to a machine, method and material for making such cushions.
5. Straver was in the employment by Flo-Pak during the time the invention described and claimed in the application was made, and that invention relates directly to the air-filled cushion business of Flo-Pak and Free-Flow.

6. As President of Free-Flow, I was aware that the application was being filed and that Free-Flow's attorney Edward S. Wright was corresponding with Straver through a Dutch attorney in an effort to get Straver to sign the application papers and transfer his interest in the application to Free-Flow. Mr. Wright's efforts in that regard were made on behalf of Free-Flow.

7. I have recently received new information as to the present whereabouts of Straver. Upon confirmation of that information and the fact that Straver is no longer represented by Vriesendorp or other hostile counsel, we are planning to send additional copies of the application papers to him directly and renew our efforts to get him to sign the application.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18, United States Code, §1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signed at Redwood City, California this 27th day of February, 2004.

  
\_\_\_\_\_  
Arthur Graham



FLEHR HOHBACH TEST ALBRITTON & HERBERT LLP  
ATTORNEYS AT LAW

EDWARD S. WRIGHT  
(Palo Alto Office)

PATENTS, TRADEMARKS, COPYRIGHTS

FOUR EMBARCADERO CENTER  
SUITE 3400  
SAN FRANCISCO, CALIFORNIA 94111-4187

(415) 781-1989

850 HANSEN WAY  
SUITE 200  
PALO ALTO, CA 94304-1017

(650) 494-8700  
FAX: (650) 494-8771

January 16, 2002

VIA AIRMAIL AND FACSIMILE  
011-31-70-3646793

OCTROOIBUREAU VRIESENDORP & GAADE  
Postbus 266  
NL-2501 AW Den Haag  
THE NETHERLANDS

Re: Case/Free-Flow U.S. Patent Application  
**DEVICE FOR MANUFACTURING CUSHIONS FILLED  
FILLED WITH A MEDIUM, SERIES OF CUSHIONS  
AND CUSHION MANUFACTURED BY SUCH A DEVICE,  
AND TUBULAR FOIL (PCT/NL01/00351)**  
Your Ref: USP165429  
Our File A-71266/ESW (formerly A-71253/ESW)

Gentlemen:

This application was forwarded to the United States Patent Office on January 8, 2002. It was filed by Express Mail and should receive that date as its filing date. In addition the application, we also filed a preliminary amendment in order to put the claims in the form you suggested. In so doing, we noted that Claim 6 of the PCT application was omitted from the claims which you sent, so we added Claim 26 which corresponds to it. Copies the papers, as filed, are enclosed for your records.

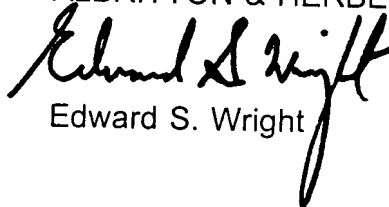
This application was filed without formal papers (declaration, assignment and power of attorney), and we will send you a new set once we have the serial number assigned to the application.

In compliance with the duty of disclosure which we have in the United States, we trust that you will advise us of any pertinent prior art that you may be aware of and that you will send us copies of any references which have been cited in corresponding applications in other countries.

I will let you know as soon as I hear anything from the Patent Office with regard to this application. In the meantime, please let me know if you have any questions about the application papers or the information I need in connection with the duty of disclosure.

Very truly yours,

FLEHR HOHBACH TEST  
ALBRITTON & HERBERT LLP



Edward S. Wright

ESW:mlc  
Enclosures

cc: Mr. Arthur Graham v/encls)

# **EXHIBIT O**

# DECLARATION FOR PATENT APPLICATION

As a below-named inventor, I hereby declare that:

My residence, mailing address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled **DEVICE FOR MANUFACTURING CUSHIONS FILLED WITH A MEDIUM, SERIES OF CUSHIONS AND CUSHION MANUFACTURED BY SUCH A DEVICE, AND TUBULAR FOIL**, the specification of which

(check one) ☐ is attached hereto.

☒ was filed on January 8, 2002 , as  
Application Serial No. 10/031,111 .

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, §1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)			Priority Claimed	
<u>PCT/NL01/00351</u>	<u>PCT</u>	<u>May 8, 2001</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(Number)	(Country)	(Day/Month/Year Filed)	Yes	No
<u>1015127</u>	<u>Netherlands</u>	<u>May 8, 2000</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(Number)	(Country)	(Day/Month/Year Filed)	Yes	No
<u>                    </u>	<u>                    </u>	<u>                    </u>	<input type="checkbox"/>	<input type="checkbox"/>
(Number)	(Country)	(Day/Month/Year Filed)	Yes	No

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulation, §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

<u>                    </u>	<u>                    </u>	<u>                    </u>
(Application Serial No.)	(Filing Date)	(Status)
		(patented, pending, abandoned)
<u>                    </u>	<u>                    </u>	<u>                    </u>
(Application Serial No.)	(Filing Date)	(Status)
		(patented, pending, abandoned)

Direct all telephone calls to Edward S. Wright at (650) 494-8700.

Address all correspondence to:

Edward S. Wright  
FLEHR, HOHBACH, TEST,  
ALBRITTON & HERBERT  
Suite 3400, Four Embarcadero Center  
San Francisco, California 94111

File No. A-71266/ESW

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18, United States Code, §1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or  
first inventor:

Pieter Theodorus Joseph Aquarius

Inventor's signature:

Date:

Residence:

Citizenship:

Mailing Address:

Stramproy, The Netherlands

Dutch

Industrieweg 24

NL-6039 AC Stramproy, The Netherlands

Full name of second joint  
inventor, if any:

Frederik Cornelis Martinus Straver

Inventor's signature:

Date:

Residence:

Citizenship:

Mailing Address:

Laren, The Netherlands

Dutch

Hilversumseweg 21

NL-1251 EV Laren, The Netherlands

Full name of third joint  
inventor, if any:

Inventor's signature:

Date:

Residence:

Citizenship:

Post Office Address:

# **EXHIBIT N**

**DECLARATION AND POWER OF ATTORNEY  
FOR PATENT APPLICATION**

As a below-named inventor, I hereby declare that:

My residence, mailing address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled ***DEVICE FOR MANUFACTURING CUSHIONS FILLED WITH A MEDIUM, SERIES OF CUSHIONS AND CUSHION MANUFACTURED BY SUCH A DEVICE, AND TUBULAR FOIL***, the specification of which

(check  
one) ☐ is attached hereto.

☒ was filed on May 8, 2001 as  
PCT International Application No. PCT/NL01/00351.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, §1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)			Priority Claimed	
<u>NL 1015127</u>	<u>NL</u>	<u>8 May 2000</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(Number)	(Country)	(Day/Month/Year Filed)	Yes	No
<u>                    </u>	<u>                    </u>	<u>                    </u>	<input type="checkbox"/>	<input type="checkbox"/>
(Number)	(Country)	(Day/Month/Year Filed)	Yes	No

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of the Federal Regulation, §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

                                      
(Application Serial No.)

                                      
(Filing Date)

                                      
(Status)

I hereby appoint the following attorneys to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith: Harold C. Hohbach, reg. No. 17,757; Aldo J. [redacted], Reg. No. 18,048; Donald N. MacL [redacted], Reg. No. 20,316; Edward S. Wright, Reg. No. [redacted], 903; David J. Brezner, Reg. No. 24,774; Richard E. Backus, Reg. No. 22,701; Robert B. Chickering, Reg. No. 24,286; Richard F. Trecartin, Reg. No. 31,801; Michael A. Kaufman, Reg. No. 32,988; Edward N. Bachand, Reg. No. 37,085; R. Michael Ananian, Reg. No. 35,050; Robin M. Silva, Reg. No. 38,304; Maria S. Swiatek, Reg. No. 37,244; Todd A. Lorenz, Reg. No. 39,754; provided that if any one of said attorneys ceases being affiliated with the law firm of Flehr Hohbach Test Albritton & Herbert LLP as partner, employee or of counsel, such attorney's appointment as attorney and all powers derived therefrom shall terminate on the date such attorney ceases being so affiliated.

Direct all telephone calls to Edward S. Wright at (650) 494-8700.

Address all correspondence to:

Edward S. Wright  
FLEHR HOHBACH TEST  
ALBRITTON & HERBERT LLP  
Suite 3400, Four Embarcadero Center  
San Francisco, California 94111

File No. A-71253/ESW

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18, United States Code, §1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or  
first inventor:

Pieter Theodorus Joseph Aquarius

Inventor's signature:

Date:

Residence:

Citizenship:

Mailing Address:

Stramproy, The Netherlands

Dutch

Industrieweg 24

NL-6039 AP Stramproy, The Netherlands

Full name of second joint  
inventor, if any:

Frederik Cornelis Martinus Straver

Inventor's signature:

Date:

Residence:

Citizenship:

Mailing Address:

Laren, The Netherlands

Dutch

Hilversumseweg 21

NL-1251 EV Laren, The Netherlands

**DECLARATION AND POWER OF ATTORNEY  
FOR PATENT APPLICATION**

## **EXHIBIT P**



**EMPLOYMENT CONTRACT****BETWEEN**

Flo-Pak BV  
Nijverheidsweg 4  
6422 PD Heerlen  
The Netherlands

-hereinafter referred to as the "Company"-

**AND**

Frederik C. M. Straver  
Hilversumseweg 21  
1251 EV Laren, The Netherlands

-hereinafter referred to as the "Managing Director"-

**THE FOLLOWING EMPLOYMENT CONTRACT IS ENTERED INTO:**

**Section 1****Commencement of Employment**

1. Employment shall commence on October 1, 1997.
2. As a condition of this employment, the Managing Director agrees to relocate his household to the Province of Limburg, The Netherlands, within six (6) months of the commencement date stated in Section 1, Paragraph (1) above.

**Section 2****Functions**

1. Mr. Frederik C. M. Straver shall be employed as Managing Director of the Company.
2. The Managing Director's functions shall include the activities of the general management of the Company, as defined in Addendum "A" attached.



3. The Company shall retain the right to assign the Managing Director other activities which can be reasonably expected of him and which are in accordance with his knowledge, abilities, and performance, to the extent this should be required for business reasons. In such case, the remuneration shall remain the same.

### **Section 3** **Remuneration**

1. The Company shall pay to the Managing Director for his services a regular compensation of NGL 180,000 per annum. This amount shall be paid in 12 installments of NGL 15,000 each at the end of each month. The Company shall withhold from the Managing Director's salary all deductions for wage taxes, social security contributions, etc., required to be withheld by law. Should the Company incur any liability for wage taxes or social security premiums in connection with the payment of cost allowances, fringe benefits, pension schemes, etc. for the Managing Director, such amounts shall in turn be owed by the Managing Director to the Company.
2. The salary will be reviewed annually for the first time on October 1, 1998.
3. In addition to his regular compensation, the Managing Director shall be entitled to an annual bonus based on the combined operating results of both Flo-Pak BV and Flo-Pak GmbH, as follows:

The annual bonus will be a percentage of the combined pre-tax profits in excess of 20% of the combined invested capital of both the Company and its affiliate Flo-Pak GmbH, Herbrechtingen, Germany. Invested capital is defined as the sum of all equity capital invested plus retained earnings plus all loans from the parent Company or from any affiliate. The percentage to be applied to the pre-tax profits in excess of invested capital shall be negotiated each year between the Company and the Managing Director. During the first year of employment, this percentage shall be equal to seven (7) percent. Each Company shall pay its respective share of this annual bonus.

4. If it is necessary to properly fulfill his duties, or if it is otherwise in the interest of the Company, the Managing Director shall work overtime beyond the regular hours of business without any additional compensation.
5. Flo-Pak will not contribute to the Managing Director's retirement, health and disability insurance. The cost of insurance will be borne directly by the Managing Director.

#### **Section 4**

##### **Expenses**

1. The Company shall pay a fixed monthly representation expense amount of DFL 500 to cover incidental expenses not covered in Section 4, 2. below.
2. The Company shall reimburse the Managing Director for reasonable expenses incurred in connection with his service as Managing Director, provided these expenses appear to be justified by receipts and documentation.
3. The Company shall provide the Managing Director with the use of a Company car in the price range between Dfl 80,000 and Dfl 85,000. The type of car shall be agreed upon by the Company. The Managing Director shall be entitled to use this car also for personal use up to 15,000 kilometers each year.
4. For the first six (6) months of his employment the Managing Director shall be entitled to reimbursement of temporary living expenses in connection with his relocation to Southeastern Holland for hotel, taxi, food, etc., justified by receipt.

#### **Section 5**

##### **Termination of Employment**

1. With four (4) months written notice, either the Company or the Managing Director may terminate this Agreement.
2. Notice of termination shall require written form. A letter of termination by the Company may be directed to the last known address for the Managing Director.
3. After notice of termination having been given by the Company, and provided the Managing Director agrees, the company is entitled to release the Managing Director from work prior to the termination date but is, nevertheless, obligated to pay his remuneration to the termination date. After notice of termination having been given by the Managing Director and provided he agrees, the Company may release the Managing Director from work at any time until the expiration of the four (4) month notice period and shall be obligated to pay the Managing Director only up to the release date plus all accrued vacation.
4. The employment shall automatically end, without a termination of notice being required, upon expiration of such month during which the Managing Director shall have reached the age of 60 years.



8

### **Section 6**

#### **Vacation**

1. Combined with his earned vacation from Flo-Pak GmbH, Herbrechtingen, Germany, the Managing Director shall be entitled to an annual paid vacation of twenty-five (25) days. Vacation taken shall be simultaneous with vacation taken from Flo-Pak GmbH, during which the Company shall pay the Managing Director his regular salary.
2. The Managing Director will lose and not be entitled to compensation for any vacation days not used within two years following the calendar year in which said vacation days are accrued.

### **Section 7**

#### **Prevention from Work**

1. In case of sickness or prevention from work due to any other reasons, the Managing Director shall inform the Company without delay of the reason and expected duration of his absence, at the latest in the morning of the first day of absence.
2. In case of sickness, the Company is entitled to conduct medical checks of the Managing Director's illness via an "Arbodienst" (medical control company).

### **Section 8**

#### **Disability or Long-Term Illness**

1. Should the Managing Director become disabled or suffer a long-term illness greater than twenty-four (24) months which prevents him from performing his day-to-day duties as Managing Director, the Company, at its option, may replace the Managing Director on an interim or permanent basis as the Company may desire.
2. During the first year of any long-term disability or illness the Company shall pay the Managing Director his full salary.
3. After the first year of any long-term disability or illness the Company shall have no obligation to provide any compensation to the Managing Director whatsoever.

### **Section 9**

#### **Additional Activities**

1. The Managing Director shall, during the term of his employment, devote his efforts and energies entirely to his functions with the Company except as provided by Paragraph 2 below.
2. Except with the express written consent of the Company, the Managing Director shall not directly or indirectly render any services of a business, commercial or professional nature, whether for compensation or otherwise, to any other person or organization during the term of this employment.
3. If the Managing Director should violate any obligation as set forth in this section, the Company shall be entitled to terminate this Agreement in accordance with Dutch employment laws.

### **Section 10**

#### **Confidentiality**

1. Both during employment and after employment shall have ceased, the Managing Director shall carefully guard and keep secret trade secrets and other confidential information relating to the business of the Company and its affiliates, and shall not directly or indirectly disclose the same, nor shall he use the same in any way except as required in the course of his employment and with the written consent of the Company or its affiliates.
2. All papers, records and documents of every kind, including but not limited to memoranda, notes, effects, plans, customer lists, price sheets, discount schedules, data, and any and all copies thereof which at any time have or shall come into the possession or under the control of the Managing Director by virtue, in whole or in part, of his employment, shall be the exclusive property of the Company and its affiliates regardless of who purchased, made, copied, or otherwise obtained such property. Upon request, either during his employment or after his employment shall have ceased, the Managing Director shall immediately surrender to the Company all such papers, records and documents and thereafter the Company shall reimburse him for all reasonable expenses incurred in the acquisition or return of such property which expenses have not been previously reimbursed to him.

### **Section 11**

#### **Inventions and Discoveries**

1. The Managing Director undertakes to inform the Company promptly and fully if at any time while in the employment of the Company the Managing Director shall discover, make or conceive either by himself or jointly with any other



person or persons any invention, discovery or design, which relates to or is connected with the business of the Company or its affiliates, whether discovered, made or conceived during or outside regular working hours and whether or not made or conceived at the request or suggestion of the Company and its affiliates. (All such inventions, discoveries or designs shall be transferred to the Company upon written request of the employer.) If so required, the Managing Director shall take all steps to assist the Company in taking steps to give the Company in any part of the world protection whether by way of letters patent or otherwise. The Managing Director also agrees to execute all documents and do all things necessary to obtain letters patent, to vest the Company or its nominees all things necessary to obtain letters patent, to vest the Company or its nominees with full and exclusive title thereto, and to fully assist the Company or its nominees in protecting the same against infringement by others.

2. The procedure of the transfer of title and the remuneration thereof shall be governed by Dutch law.

### **Section 12**

#### **Non-Competition**

The Managing Director shall not, save with the written approval of the shareholders of the Company, during his employment with the Company and for a period of two years upon the termination of his employment by the Company be engaged, involved or concerned, as principal or otherwise, directly or indirectly, with any company, manufacturing process or trade in The Netherlands, The United Kingdom, Germany, France, Belgium, Denmark, Austria, and/or Switzerland, which may be reasonably considered to be in opposition to or in competition with the business or interests of the Company or its affiliates, nor shall the Managing Director be financially engaged in any way in such a company or such a trade or be employed by or otherwise be involved or connected, directly or indirectly, with a company which is a competitor of the Company, provided that nothing in this section contained shall preclude the Managing Director from acquiring or holding by way of investment not more than fifteen percent of the shares or other securities of any such company or other business organization quoted on any recognized Stock Exchange.

### **Section 13**

#### **Penalty Clause**

Should the Managing Director not observe any of the obligations provided for in Sections 10, 11, 12 of this contract, then the Managing Director shall without any prior notice or court action forfeit a penalty payable to the Company of DFL 5,000 per breach per day that such a breach shall continue, which penalty cannot be moderated, without prejudice to the rights of the Company and its



affiliates to claim costs, damages and losses suffered as a result of a breach by the Managing Director and without prejudice to the right of the Company to terminate this contract immediately and without notice.

#### **Section 14** **Advance Payments and Loans**

In case of termination of employment, the balance of any advance payments and loans shall become due for repayment upon notice of termination being given, irrespective of the terms under which these payments were granted.

#### **Section 15** **Questionnaires**

The statements contained in the curriculum vitae and all other written representations shall constitute an essential part of this Employment Contract. Any incorrect statements may entail a rescission of the Employment Contract.

#### **Section 16** **Law Governing**

1. This Agreement shall be governed by Dutch Law.
2. Jurisdiction for both parties shall be within the Cantonal Court for the place of performance, i.e., Kantonrechter of Heerlen or the Cantonal Court for the place of residence of the Managing Director.

#### **Section 17** **Duties of Information**

The Managing Director shall inform the Company without delay of any change in his personal circumstances (address, civil status, etc.).

#### **Section 18** **Amendments to the Contract**

1. Any side agreements and amendments of the contract shall require written form in order to become valid.
2. In the event that individual provisions of the contract should be invalid, the validity of the remaining contract provisions shall not be affected thereby.

3. The parties shall endeavor to replace any invalid provision in this contract by such valid provision which as closely as possible achieves the purpose originally intended.

Redwood City, CA USA 13 Oct 1997  
Place and Date

LAREN NL Oct 1. 1997  
Place and Date

Arthur Graham  
Arthur Graham, Managing Director

Frederik C. M. Straver  
Frederik C. M. Straver



# **EXHIBIT L**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)	
Pieter Theodorus Joseph Aquarius, et al.	)	Examiner: Unknown
Serial No. 10/031,111	)	Group Art Unit: Unknown
Filed: January 8, 2002	)	
For: DEVICE FOR MANUFACTURING	)	International Application
CUSHIONS FILLED WITH A	)	No. PCT/NL01/00351
MEDIUM, SERIES OF CUSHIONS	)	
AND CUSHION MANUFACTURED	)	International Filing
BY SUCH A DEVICE, AND	)	Date: May 8, 2001
TUBULAR FOIL	)	

**SECOND SUPPLEMENTAL STATEMENT OF EDWARD S. WRIGHT**  
**IN SUPPORT OF PETITION UNDER 37 CFR 1.47(b)**

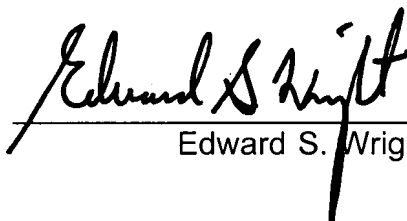
I, Edward S. Wright, make the following statement under penalty of perjury and upon my oath of office as a registered patent attorney.

1. After filing this application, I sent a complete copy of the application papers as filed to Vriesendorp & Gaade by airmail with a letter dated January 16, 2002. Those papers included a 37 U.S.C. §371 transmittal letter, a copy of the PCT application, a preliminary amendment, and a copy of the international search report. Copies of the letter and the papers are attached as Exhibits L and M, respectively.

2. A copy of the combined declaration and power of attorney which I sent to Vriesendorp with my letter (Exhibit B) and email message (Exhibit C) of December 21, 2001 is attached as Exhibit N.

3. A copy of the declaration which I sent to Vriesendorp with my letter of April 29, 2002 (Exhibit E) is attached as Exhibit O.

Signed at Menlo Park, California this 27th day of February, 2004.

  
\_\_\_\_\_  
Edward S. Wright

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)	
Pieter Theodorus Joseph Aquarius, et al.	)	Examiner: Unknown
Serial No. 10/031,111	)	Group Art Unit: Unknown
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MEDIUM, SERIES OF CUSHIONS	)	
AND CUSHION MANUFACTURED	)	International Filing
BY SUCH A DEVICE, AND	)	Date: May 8, 2001
TUBULAR FOIL	)	

**NOTICE OF CHANGE OF ATTORNEY'S ADDRESS**

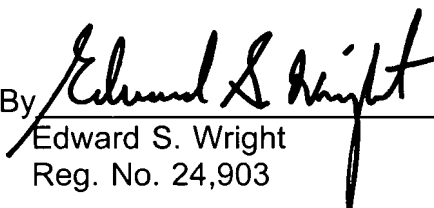
Mail Stop PCT  
Commissioner for Patents  
Office of PCT Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

All further correspondence and other communications regarding this application and any patent issuing thereon should be directed to applicant's attorney of record at the following address:

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1100 Alma Street, Suite 207  
Menlo Park, CA 94025  
(650) 330-0830 (Phone)  
(650) 330-0831 (Facsimile)  
twright@claim1.com

Respectfully submitted,

By   
Edward S. Wright  
Reg. No. 24,903